

Internal Revenue Service
memorandum

TL-N-6431-88

CC:TL:TS

WHEARD

date: JUL 8 1988

to: District Counsel, Sacramento W:SAC

from: Director, Tax Litigation Division CC:TL

subject: Procedure for Ordering Administrative File in TEFRA Cases

This is in response to your memo regarding the above matter to Western Region which you copied us. You suggested that, when ordering administrative files in a TEFRA case following the filing of a petition, the Appeals Office should first determine whether or not there is a jurisdictional issue. This will prevent substantial delays which would be particularly troublesome when the first petition is improper and a defense letter needs to be prepared for a proper petition in District or Claims Court. We agree with your conclusion and suggest the procedures below be followed. We are forwarding a copy of this memorandum to the Appeals Division, National Office for their consideration.

ISSUE

Whether the Appeals Office should first review TEFRA petitions for jurisdictional defects before ordering the administrative file.

CONCLUSION

Yes. TEFRA petitions should at least be compared against the list of TEFRA petitions generated by the Tax Shelter Branch, Tax Litigation Division in order to determine if it is the petition that will go forward or will be dismissed.

FACTS

When a petition is filed the Appeals Division automatically orders the administrative file for the case and sends it to the District Counsel office with jurisdiction. This presents a problem in TEFRA cases since all notice partners (or notice shareholders in S corporations) can potentially file a petition,

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in addition to the tax matters partner or tax matters person. As a consequence it is common for more than one petition to be filed with respect to the same partnership or S corporation. The first petition filed is not necessarily the action that will go forward. If the administrative file is sent to the District Counsel office with responsibility for the first petition, the office with responsibility over a later proper petition may not receive the administrative file in a timely manner.

DISCUSSION

Only the tax matters partner (person) may file a petition in the first 90 days after the FPAA (FSAA) is mailed to the TMP. He may file a petition in the Tax Court, District Court or Claims Court. Only if the TMP does not file in the first 90 days can a notice partner (shareholder) file in the 60 day period following the 90 day period. In the event the TMP does not file in the first 90 days, the first petition by a notice partner (the TMP is also a notice partner) in the tax court will go forward and all other cases will be dismissed. Only if there is no filing in the Tax Court in the 60 day period by a notice partner, will a petition by a notice partner (shareholder) in District Court or the Claims Court go forward.

As an initial step we recommend that Appeals check for duplicate petitions and petitions prematurely filed (in the first 90 days by notice partners) and determine if a petition is otherwise proper and should go forward in accordance with the rules stated above. A list of TEFRA petitions which includes the status of the filing partner (shareholder) is currently being generated by the National Office, Tax Shelter Branch, Tax Litigation Division and is distributed on a monthly basis to Regional Counsel and others.

Although District Court and Claims Court petitions are included in our list of TEFRA petitions we sometimes experience a delay in receiving notice of these petitions from the Department of Justice or our District Counsel offices. We are attempting to institute procedures in which we will receive more timely notice of District and Claims Court actions so that our TEFRA petition list will always be current.


The petition should also be checked, to the extent possible, for other jurisdictional defects (i.e., whether a partner has previously signed a settlement agreement thus converting his partnership items to nonpartnership items; whether a purported TMP has been terminated as such under the special enforcement provisions of Temp. Treas. Reg. § 301.6231(c) or has otherwise been terminated). This may not always be possible since such information may not be immediately available (as when we are unaware that the TMP has filed for bankruptcy) or may only be found in the administrative file.

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Please refer any questions you may regarding this matter to
Bill Heard at FTS 566-3289.

MARLENE GROSS

By:


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